



## **Software Licensing Agreement/Terms (End-user Licensing Agreement – EULA)**

### **1. General**

1.1 The Licensor is Carl Zeiss Industrielle Messtechnik GmbH and the Licensee is the end customer. Licensor provides Licensee with a non-exclusive, non-transferable right of use the "Software Product" which comprises the particular software program and related licensed software modules, subsequent enhancements, updates, patches and associated documentation for company-internal operation as well as the related manuals and software documentation.

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### **2. Term and Termination**

2.1 This License Agreement and therewith the right of use will be effective and in force with the full payment of the License Fees to the Licensor (Effective Date). Except for Licensees with a fixed-term license period, this License Agreement shall commence on the date stated in the order approval of the Licensor (Effective Date) or the commencement date stated by the Licensor in a written agreement (Effective Date) . This License Agreement and therewith the right of use ends automatically after seven (7) years from the Effective Date on.

In case of additional Concurrent Authorized Users who are authorized and added after the initial License Fee payment, the term of their usage of the Software Product shall be coterminous with the preexisting then-current term. If Licensee purchases an upgrade, the term of this License Agreement shall continue in effect for the specific term set forth in the new license and authorization key document issued for the upgrade.

2.2 This License Agreement can be terminated by the Licensee at any time by registered letter to the Licensor.

2.3 The Licensor is entitled to terminate this License Agreement and the rights of use upon with immediate effect, in the event that the Licensee is breaching any regulation of this License Agreement or condones the breach of this License Agreement by a third party or is not fulfilling its obligations of this License Agreement or if the Licensee files for bankruptcy or a change of control of the Licensee is taking place.

2.4. Notwithstanding the aforementioned regulation in this Chapter 2 and if no otherwise stipulated in this License Agreement, this License Agreement will be terminated automatically if any regulation of this License Agreement is violated by the Licensee.

Furthermore this License Agreement terminates automatically in the event that the Licensee transfers the possession of the Software Product or any copy of the Software to another party or in the event upon sale of the computer or measuring machine to a third party on which the Software Product is installed. The right of use regarding the previous version(s) ends with the installation of the update or upgrade. The Licensee is not authorized to use the previous version(s) on a different computer system anymore or to make available the use of the previous version(s) to any third party.

2.5 In any event neither full nor partial refund of licensing fees shall be granted in any case of termination. The Licensee shall adhere to the conditions for returns and deletion set forth in Chapter 10. Licensee agrees to destroy all copies - whole, portions, or merged - of the Software Product when this License Agreement terminates.

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3.2 In addition to this, the Licensee is authorized to create a single copy for backup purposes. This backup copy of the licensed Software Product is to be indicated as such.

3.3 If, for reasons related to data security or backup, the computer system including the subject of the contract has to be reactivated quickly subsequent to total failure and it is necessary to back up the entire data set including the installed Software Product, then the Licensee may create the number of backup copies that is absolutely needed. The respective data media is to be labeled appropriately. The backup copies shall only be used for archiving purposes.

3.4 The Licensee is not permitted to make or request third parties to make further copies including printing the program code using a printer or making photocopies of the manual.

### **4. Resale and Transfer**

4.1 If the Software is indicated as "NFR" (Not for Resale) or "Not for Resale" or "evaluation copy" or "Free time limited trial", then the Licensee is not authorized to use the Software Product or usage of the affiliate manuals and related software documentation for commercial purposes and shall not resell, transfer or otherwise provide the Software Product to others if not expressly permitted to do so by the Licensor. Commercial usage also refers to use of the Software Product to create publicly distributed computer software.

The Licensee is not authorized to rent out, lease out, lend or provide the software product to third parties by way of hosting or download options, unless not explicitly indicated/permitted in written form by the Licensor.

4.2 However it is permitted to transfer the Software to third parties if the third parties are not granted a right of use for their own and if they have to use the Software Product as defined by the Licensee. This is usually the case for employees of the Licensee, but not for independent service providers, etc.

4.3 In the case of licensing the Software Product to a leasing company (Lessor), it is left to the leasing company to provide the Software Product to an agreed lessee in accordance with the terms and conditions of this License Agreement. In the case of a re-lease of the leased asset it is allowed to the Lessor, to transfer the rights to use of the Software Product with the leased asset by providing the following information in written form prior to the planned transfer (which CMM/system/serial number, effected software licenses, name/address of the old & new lessee) as well as in written form that the Lessee will accept the terms and conditions of the transferred license.

4.4 The Software Product may be transferred to another party as part of a machine sale that includes the Software Product, provided that all of the following conditions are fulfilled:  
(a) the transferring user does not retain any copies thereof;

(b) as a condition precedent to the effectiveness of any such transfer, the receiving party must expressly accept the terms and conditions of this License Agreement in writing via written notification to Licensor; and

(c) the transferred Software must be up-to-date (latest software revision) at the time of transfer.

Licenses can only be transferred within the European Union or outside the European Union only in the country they were originally acquired; and

(d) all Software Modules of the Software Product are transferred as one package and not as individual licenses.

#### 4.5 Transfer within legal entities or global corporations of the Licensee.

The transferring Licensee and the receiving party are in one legal entity or affiliated companies.

"Affiliated companies" shall mean any legal entity that directly or indirectly controls a legal entity, or is controlled by a legal entity or its parent company. "Control" as used herein means direct or indirect ownership of more than fifty per cent (50%) of the stock of such entity, or more than a fifty per cent (50%) interest, direct or indirect, in the decision-making authority of such entity.

#### 4.6 Transfer of software license options

If the Software Product is transferred with involvement of the Licensor a License Fee according to the applicable price list of the Licensor will be due.

The number of transfers is limited up to four (4) transfers during the term of this License Agreement.

### 5. Multiple usage

5.1 The Software Product can only be used on up to two monitors connected to a single computer unless otherwise agreed upon in writing by the Licensor. Only in emergency cases the Licensee is allowed to use the software on alternative units of the same type. Multiple usage of the Software Product requires written permission from the Licensor or a change of the license type to such as concurrent/floating licenses which implies a different License Fee to be charged.

5.2 If the Licensee wishes to use further on the Software Product, which was replaced by an update or an upgrade, parallel to the current Software Product, the Licensee needs the prior written approval of the Licensor.

#### 5.3 Concurrent or Floating License

The term "Concurrent Use License" means a license to use the Software Product based on the number of users who can use the Software Product at any one time when the Software Product is either installed

(a) on a computer file server and initiated by an individual from another computer on the same internal network as the computer file server, or

(b) on an individual's computer but only made available for use when such individual's computer is granted permission by a computer file server over an internal network, or

(c) on a computer through a documented/controlled "license check-out" process for a limited time period which ensures that the number of licenses on the network is automatically reduced/adjusted.

Including the automatic return of a checked-out license after the expiration of the time period set in the system or an earlier manual license return.

Concurrent Use Licenses are subject to higher fees than standard software licenses available under a cumulative licensing program.

The total number of users who can use the Software Product at any one time may not exceed the total number of Concurrent Use Licenses granted to the Licensee for such Software Product. Except as otherwise set forth hereunder, all other terms of this License Agreement shall govern Licensee's use of the Software Product licensed under a Concurrent Use License.

Concurrent licenses are available as "national" concurrent license or as time zone based concurrent license within the following regions: Asia, Americas and Europe. Global concurrent licenses are not available.

### 6. Decompiling and program modifications

6.1 The Licensee shall not modify the Software Product unless modification is required to repair defects and the Licensor has delayed repair of the defects. In case of the latter and if the repair

process can divulge important program functions and working methods, the Licensee can only request repair from a commercially active third party if this third party is not a potential competitor of the Licensor.

6.2 Retranslation of the licensed program code into other code forms (decompiling) and other types of reverse engineering of the various different software manufacturing phases are only permitted to the extent carried out to obtain the information required to establish interoperability with an independently created computer program and if this information can not be procured otherwise. The Licensee must first request the information from the Licensor in return for payment of expenses.

6.3 Permission for decompiling also requires that reverse engineering or program observation is only carried out by means that the Licensee is authorized to carry out in accordance with this Licensing Agreement. In particular, the program code shall not be printed using a printer in any case.

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6.5 The Licensee is not authorized to remove, modify or amend any copyright notices or brand references made by the Licensor. This includes without restrictions any references in physical and/or electronic media or documentation, in the "Setup Assistant" or in the dialog fields "About ..." and/or in other references presented on the web or activated via the web, in the program code or other embodiments, which were originally included in the Software or otherwise created by the licensor.

## **7. Guarantee and right of cancellation**

7.1 The Licensor guarantees that the Software Product licensed to the Licensee will perform to the extent defined in the operating instructions if the Software Product is installed on the designated system in adherence with the Licensor's guidelines.

7.2 Defects of the Software Product or its Software Modules refer to defects that can be reproduced at any time.

7.3 The Licensor will repair defects in the Software Product including all manuals and other documents within an appropriate time frame subsequent to receiving information from the Licensee pertaining to the defect. Defects will be repaired by way of improvements made free of charge or replacement of the delivery as chosen by the Licensor.

7.4 The Licensee's right to cancellation due to inability to use the Software Product does not apply unless improvements or replacements have been carried out twice and have resulted in failure.

7.5 The Licensor will neither warrant nor guarantee functionality for measurement plans or programs created by third party suppliers or by licensee/customer or that such measurement plans or programs will run error free on Licensors software or systems respectively. The Licensor excludes any form of warranty or guarantee regarding measurement plans and programs supplied by a third party especially upon implementation of software upgrades or new program versions.

In particular, the Licensor emphasizes the resulting possibility of lack or alteration of performance relating to measurement plans should one or more of the following points apply:

- a.) Exchanged computer operating system between software revisions;
- b.) Essential alterations to calculation algorithms;
- c.) Elimination of software errors and malfunction;
- d.) Changed dependencies between software options;
- e.) Improper programming of measurement plans;
- f.) influence of software programs or modules other than from Licensor

## **8. Liability**

8.1 If the Licensee cannot use the Software Product as stipulated by contract and the Licensor is responsible for this due to neglected or incorrect implementation of suggestions and consultation prior or subsequent to signing the contract or due to breaches of other contractual obligations, then the guidelines set forth in Chapter 7 and 8 apply accordingly to the exclusion of further claims by the Licensee.

For damages not arising in the Software Product, hardware and the connected device, the Licensor can only be held liable for the following, regardless of the legal grounds:

- Intent,
- in the case of gross negligence of its executive bodies or executives,
- in the case of non-accidental damage to life, body and health, in the case of defects that Licensor has deceitfully kept secret or the absence of which Licensor has guaranteed,
- in the case of software defects to the extent of liability for personal and material damages due to personally implemented objects as set forth in the applicable product liability regulations.

8.2 In the case of non-accidental breach of significant contractual obligations, the Licensor is also responsible for gross negligence of non-managerial staff and for slight negligence, the latter of which is limited to damages typical of the contract which can credibly be foreseen.

8.3 In addition to this, the Licensor, its employees and its vicarious agents are liable for the loss or change of data caused by program errors, only to the extent which would have been unavoidable had the Licensee fulfilled its obligation to make backups on a regular basis and at least once daily.

8.4 In the case of claims due to violated copyrights, the Licensor grants the Licensee the right to continue using the Software Product or modify the Software Product in such a way as to ensure that copyrights are not violated. If this is not economically viable, the Licensor will take back the object of the contract to the exclusion of further rights and will reimburse the paid Licensing Fee minus an amount corresponding to the duration of prior use. Required for this is that the Licensee informs the Licensor of this type of claims immediately in writing and allows the Licensor all measures of defense and out-of-court arrangements.

8.5 Further claims of the Licensee are expressly excluded.

## **9. Licensee's Obligation to care for Software, Risk Assumption**

9.1 The Licensee is obliged to prevent third-party access to the Software and documentation by implementing the appropriate measures. In particular, the Licensee shall require its employees to allow no third-party access to the Software.

9.2 The Licensee shall store the original data medium in a location which is protected from unauthorized access by third parties and insist that its employees comply with the present licensing terms and copyright. In particular, the Licensee will request its employees not to make unauthorized copies of the software, the usage manual and the installation instructions.

9.3 If an employee of the Licensee should violate the copyright or allow unauthorized third parties to access the Software, then the Licensee is obliged to participate in clarifying the violation and shall inform the Licensor of the respective violation negotiation.

9.4 The Licensee is subject to the risk of coincidental destruction or loss, especially with reference to theft of the Software Product or Dongle. This Licensing Agreement shall be terminated automatically in cases of destruction or loss.

9.5 Loss of license dongle. The Licensee is responsible for the delivered software-dongle. The loss of the software-dongle is equal to the loss of the Software Product. The cost to replace the software-dongle and related software licenses will be charged to the Licensee. If the dongle is stolen an official police report is necessary to re-issue a new license for a defined reassignment fee which is currently set to 1.500,- Euro plus VAT.

Notwithstanding of the aforementioned, the Licensee shall be entitled to demand that the Licensor enter into a new license agreement and subsequently provide a Software Product. In this event, the respective licensing fees for the replacement of the stolen Software Product is set to the amount of an upgrade and shall apply.

#### **10. Obligation to return and delete provided data**

10.1 Upon termination of this Licensing Agreement, the Licensee is obliged to return all original data media as well as all documentation, materials and other documents in its possession. The Software Product and all documentation are to be sent to the Licensor free of charge. In case of transport by third parties, shipment is to be made via secure transfer (registered letter, secured package or similar) and is to be insured to an appropriate amount corresponding at least to the amount of the licensing fee. The Licensee is to confirm in writing that the Software has been uninstalled successfully.

10.2 Proper return of the Software Product includes full and final deletion of all existing copies and, in particular, copies of software on the computer.

10.3 Should the Licensee not adhere to the stipulations set forth in Chapter 10.1, 10.2 of this Licensing Agreement, then the Licensee shall pay to the Licensor a contractual penalty to the amount of the agreed licensing fee. This has no effect on any claims for damages by the Licensor.

10.4 The Licensor can decide not to return the Software Product and instead request that the Software Product is deleted and documentation is destroyed. If the Licensor decides on this course of action, Licensor will expressly inform the Licensee of this decision by written notice.

10.5 The Licensee is expressly informed that it shall not continue use of the Software Product subsequent to termination of the licensing contract and that non-compliance with this is a violation of copyright. Item 9.3 shall apply subsequent to termination of the contractual relationship.

#### **11. Data acquisition**

Installation of the ZEISS software will cause diagnostics data and technical, application relevant and additional information including defined system and hardware identifiers as well as information concerning the system software, software license and modules in addition to all devices controlled by the software and associated communication to be recorded locally on your computer. Depending on the application and configuration use case, this data can also be stored on the local network or on servers belonging to the network in order to enable additional product development or services by ZEISS.

ZEISS has the right to collect the acquired information and use this for diagnostic and ZEISS services providing this is used for the above mentioned purposes and is collected and stored in a manner which excludes any conclusion regarding persons.

Data acquisition can be prevented by uninstalling the "ZEISS CMM Agent" software.

#### **12. Final provisions**

12.1 All agreements which require modification, enhancement or concretization of these licensing terms as well as special pledges or agreements or arrangements pertaining to characteristics are to be made in writing. If these are stated by representatives or assistants to the Licensor, then they only become binding once the Licensor has issued written approval.

12.2 If any part of this contract should be or become ineffectual, then this shall have no impact on the remaining contents of the contract. The parties to the contract are to replace the ineffectual part of the contract with legally permissible terms which match the intent of the ineffectual conditions as closely as possible.

12.3 The laws of Germany apply to this contract to the exclusion of the Uniform Law on the International Sale of Goods and to the exclusion of the rules of the conflict of laws.

#### **13. Confirmation of receipt and acknowledgement**

The Licensee is aware of the licensor's use of these licensing terms. The Licensee has acknowledged these terms to a reasonable extent.

Carl Zeiss Industrielle Messtechnik GmbH  
Carl Zeiss-Str. 20  
73447 Oberkochen  
Germany

(Dated: December 2017)

## **SUPPLEMENTAL END USER LICENSE AGREEMENT FOR ZEISS SOFTWARE ("Supplemental EULA")**

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